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Attorneys for Creditors

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

USA COMMERCIAL MORTGAGE COMPANY,
Debtor.

In re:

USA CAPITAL REALTY ADVISORS, LLC,
Debtor.

In re:

USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,
Debtor.

In re:

USA CAPITAL FIRST TRUST DEED FUND, LLC,
Debtor.

In re:

USA SECURITIES, LLC,
Debtor.

Affects:

- ☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Securities, LLC
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA First Trust Deed Fund, LLC

Case No. BK-S-06-10725 LBR
Case No. BK-S-06-10726 LBR
Case No. BK-S-06-10727 LBR
Case No. BK-S-06-10728 LBR
Case No. BK-S-06-10729 LBR

Chapter 11

Jointly Administered Under Case No.
BK-S-06-10725 LBR

**OPPOSITION TO AMENDED
MOTION FOR ORDER
REQUIRING GOOLD PATTERSON
ALES & DAY, CHARTERED TO
PRODUCE ONE OR MORE
REPRESENTATIVES FOR
EXAMINATION PURSUANT TO
FEDERAL RULE OF
BANKRUPTCY PROCEDURE 2004**

On October 18, 2007, the USACM Liquidating Trustee served a copy of its AMENDED
MOTION FOR ORDER REQUIRING GOOLD PATTERSON ALES & DAY, CHARTERED
("GPAD") TO PRODUCE ONE OR MORE REPRESENTATIVES FOR EXAMINATION

1 PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 2004 on GPAD.
2 Rather than protract these proceedings by making objections at the deposition, GPAD prefers,
3 with the court's permission, to air out and resolve its objections by way of this opposition.
4 Because the motion requested that the deposition could be set as soon as ten days after the date
5 of the motion, GPAD files this immediately. If we can work out the issues before a hearing or
6 ruling, we will; otherwise, we want the issues raised in this opposition to be resolved by the
7 court.
8

9 ISSUE ONE

10 The Liquidating Trust is spending millions that could have gone into the pockets of the
11 investors. The only justification for this is that it will result in finding a greater amount of
12 money then spent on this endeavor for distribution to the investors. Any other result would be a
13 travesty of justice and the result of poor planning and thought, with the unwanted result of taking
14 money out of the pockets of the investors and lining the pockets of attorneys.
15

16 The Liquidating Trustee has been investigating these bankruptcies for months. At least
17 five employees (or former employees) of GPAD have done transactional work for USACM:
18 Barry Goold, Jeff Patterson, Bryan Day, Tom DeVore (former employee), and Thomas Rondeau.
19 In addition, Thomas Rondeau, Barney Ales and Doug Monson (former employee) have
20 represented USACM in litigation. GPAD cannot close its offices and have five of seven current
21 attorneys show up because they may be needed. At this point, more than five months after
22 GPAD delivered all of their files to the Liquidating Trustee – most of which covered loans done
23 in the 1990's that have been fully repaid without complaint from the investors or borrowers – it
24 seems that one of the fruits of the Liquidating Trustee's and his attorneys' labors, and an
25 inevitable result of the investigation over more than a year into USACM's affairs, is that the
26 Liquidating Trustee can meaningfully limit the scope of the exam to specific loans or litigation
27
28

1 matters that he has identified as a source of misappropriation of funds or other past conduct that
2 could lead to a recovery for the investors.

3 Postconfirmation 2004 exams are limited to issues that the court may still entertain, and
4 their use is not as broad as in a preconfirmation exam. See *In re Medical Management, Inc.*, 104
5 B.R. 522 (Bankr. M.D. Ga. 1989), among many cases so holding. Asking the Liquidating
6 Trustee now to properly limit the scope of his exam is appropriate, and should be doable with
7 relatively little effort if he has properly prepared his deposition before moving the Court for
8 permission to conduct it.

9
10 Considering the foregoing, GPAD asks that this Court order the Liquidating Trustee to
11 limit the scope of the 2004 exam to the matters that he has identified that he reasonably believes
12 would lead to something of value to the investors or other creditors of USACM, or would assist
13 in postpetition administration. GPAD may then determine who should attend the exam, and can
14 work with the Liquidating Trustee's attorneys to schedule appearances of those who should
15 attend in such a manner as to avoid the needless imposition upon GPAD to either shut down to
16 be potentially ready with the right people, or to waste time after the depositions start with
17 scheduling issues on an ad hoc basis as we learn the matters covered by the deposition. GPAD
18 also believes that if the Liquidating Trustee is unable to do so after the time and money already
19 expended in the investigation, then perhaps that money and effort have not been well spent, and
20 the Court should evaluate the investigation because it would appear to be for the benefit of only
21 the Liquidating Trustee and its attorneys.

22 ISSUE TWO

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24 The motion affects, according to the box checked on page 1, USA Commercial Mortgage
25 Company only. GPAD is unaware of the authority of the Liquidating Trustee to waive the
26 attorney client privilege for the other debtors, yet the motion seeks examination into the other
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1 debtors, their affiliates, as well as other unnamed and unspecified “otherwise related entities.”

2 GPAD is a law firm, and our communications with our clients are of course privileged.
3 Absent a valid waiver of that privilege, the 2004 examination into anyone other than USACM
4 will be severely truncated, and perhaps useless. Surely the Liquidating Trustee knows what
5 other entities are pertinent to its examination at this time, and can name them, as well as identify
6 the waiver of the attorney-client privilege that it is relying on; or if none exists, what non-
7 privileged facts he hopes to learn that will assist him in his quest to find more money for the
8 creditors. Again, at this point in the proceedings, this seems little to ask, and the revelation will
9 significantly assist GPAD with its efforts to cooperate in good faith with the subpoena.
10

11 CONCLUSION

12 GPAD is happy to provide any information that it has and may lawfully disclose to aid
13 the Liquidating Trustee’s search for additional assets to satisfy creditors’ claims. GPAD believes
14 that asking the Liquidating Trustee to specifically identify what conduct or transactions of
15 USACM it reasonably believes GPAD may provide useful information about – especially in light
16 of the dozens of closed and repaid loans for which all statutes of limitations have run – is both
17 fair and reasonable. As for any entity other than USACM, GPAD’s requests about proper waiver
18 of the attorney-client privilege are appropriate. If the privilege has not been waived, the
19 Liquidating Trustee should be able to identify what non-privileged information of value he hopes
20 to learn. GPAD’s request to basically conform the order for a 2004 exam to what the
21 Liquidating Trustee has learned that he needs, rather than leaving it open to misuse because not
22 reasonably limited, is reasonable and should be granted.
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26 (Remainder of page left blank; signature page follows).
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Dated this 23 day of October, 2007.

GOOLD PATTERSON ALES & DAY

By: /s/Thomas Rondeau
Thomas Rondeau